

Compliance Testing 101



U.S. AIR FORCE

AFCEE Housing
Privatization
Workshop
San Antonio, TX

5/6 May 04

Seth Weinert

Jones Lang LaSalle



U.S. AIR FORCE

Agenda

- Introduction
 - Legal Docs
 - The Compliance Testing Process
 - Mini Case Studies
 - What is your role?
 - Q &A
-



U.S. AIR FORCE

Introduction

- **What:** Quarterly assessment of stakeholder compliance with the obligations and responsibilities mandated in transaction legal documents
- **Why:** To protect Air Force Interests and assess whether the Air Force is “getting what we paid for”
- **Who:** Installation Staff with assistance from Jones Lang LaSalle and AFCEE
- **When:** Compliance testing begins at the first closing and is an ongoing process resulting in a quarterly report (every 90 days).
- **Where:** Every project



Snapshot: Compliance Testing is approximately one year old and is currently being conducted at EVERY project in the AF Portfolio



U.S. AIR FORCE

Our Checklist for Today

- I understand that there are many legal documents governing my transaction
- I am familiar with some specific examples of “compliance items” in these documents
- I understand the compliance testing process
- I understand that my installation will customize this process to fit our needs
- I know what MY role is in this initiative and I’m ready for it!

☐☐☐☐☐



U.S. AIR FORCE

The Legal Documents

- Each project has a set of complex legal documents (as many as 5,000 pages worth!)
 - These documents are equivalent to a guide book that governs how the project works on a daily basis
 - The documents contain specific, actionable items to be completed by certain parties at certain times
 - The documents also contain provisions and clauses to guide the project through uncertain “what if” events
-



U.S. AIR FORCE

So many legal documents, so little time!

Ground Lease Quitclaim Deed

Lockbox Agreement

Senior Loan Agreement

Use Agreement

Operating Agreement

Environmental documents



Entity Organization documents

Security Agreement

Government Loan Agreement

Land Record documents

Guarantees

Forward Commitment



What can I find in the Ground Lease?

CONDITION 10 - ENVIRONMENTAL PROTECTION

- The Lessee shall comply with all Federal, State, and local laws, regulations, and standards that are or may become applicable to Lessee's activities on the Leased Premises...
 - The Lessee shall be responsible for obtaining at its cost and expense any environmental permits required for its operations under the Lease, independent of any existing permits...
 - The Lessee shall be responsible at its cost and expense for removal and disposal of all LBP in the improvements on the Leased Premises. Removal and disposal of LBP must be carried out in strict compliance with all applicable Federal, State and local laws, rules and regulations...
 - The Lessee must maintain and make available to the Air Force all records, inspection logs, and manifests that track the generation, handling, storage, treatment and disposal of hazardous waste, as well as all other records required by applicable laws and requirements.....
 - The Lessee shall have a completed and approved plan prior to commencement of operations on the Leased Premises for responding to hazardous waste, fuel, and other chemical spills. Such plan shall comply with all applicable requirements and shall be updated from time to time as may be required to comply with changes in site conditions or applicable requirements and shall be approved by all agencies having regulatory jurisdiction over such plan. The plan shall be independent of Air Force spill prevention and response plans...
-



What can I find in the Ground Lease?

CONDITION 27 - FINANCIAL REPORTING PROVISIONS

- *Financial Reports.* Within twenty (20) days after the end of each quarter of each calendar year, the Lessee shall prepare and deliver to the Government a quarterly financial report setting forth with respect to the performance of this Lease: (i) statements of collections, disbursements, and balances of operating and reserve accounts for the preceding quarter; (ii) projected cash flow separately stated for the current and upcoming quarter; and (iii) projected expenses separately stated for the current and upcoming quarter....
 - *Annual Financial Information.* Within six (6) months after the end of each fiscal year of Lessee, the Lessee shall cause a certified public accounting ("CPA") firm to provide the Government with the audited, annual financial information for such fiscal year...
 - *Annual Operating Budget.* No later than ninety (90) days prior to the beginning of each calendar year, the Lessee shall furnish to the Government, for the Government's consent, the Development's proposed annual operating budget for such upcoming calendar year. The Lessee shall also furnish to the Government all amendments to each approved annual budget, all monthly and quarterly budgets and all comparisons of actual results to budgeted projections within thirty (30) days after the end of each reporting period...
 - *Programmatic Reporting.* The Lessee shall deliver to the Government, upon such schedule as the Government may establish from time to time, and in such media (including, without limitation, electronic media) as the Government may select, all information and supporting documentation (including, but not limited to, Program Evaluation Plan (PEP) reports comprising Executive Summary, Fact Sheet including Authorities Matrix, Risks and Protections Matrix, and Project Matrix), that the Lessee has maintained, or that the Government requires...
-



U.S. AIR FORCE

What can I find in the Ground Lease?

CONDITION 24 - DISPUTES

- Disputes Valued at Less than \$10,000 (Exclusive of Interest). Except as otherwise provided in this Lease, any dispute between the Government and the Lessee arising under or related to this Lease which the Parties are unable to resolve by negotiation and in which Ten Thousand Dollars (\$10,000.00) (exclusive of interest) or less is at issue shall be decided by the Commander. The Commander shall reduce his or her decision to writing and mail or otherwise furnish a copy to the Lessee. Prior to issuance of the Commander's decision, the Parties will be afforded an opportunity to submit written evidence in support of their position. With respect to any such dispute, the Lessee agrees that the decision of the Commander shall be final and conclusive and shall not be appealable or otherwise subject to challenge.
 - Disputes Valued at More than \$10,000 (Exclusive of Interest). The Lessee and the Government hereby agree that the following procedures constitute the administrative procedures that must be exhausted before the Lessee or Government may pursue any remedy, which is available to it under the law.
 - Any dispute between the Government and the Lessee arising under or related to this Lease which the Parties are unable to resolve by negotiation and in which more than Ten Thousand Dollars (\$10,000.00) (exclusive of interest) is at issue shall be decided by the Commander. The Commander shall reduce his or her decision to writing and mail or otherwise furnish a copy to the Lessee. Prior to issuance of the Commander's decision, the Parties will be afforded an opportunity to submit written evidence in support of their position. The decision of the Commander ("Decision") shall be final and conclusive unless, within thirty (30) calendar days from the date of receipt of the Decision, the Lessee furnishes the Commander, by certified mail, a written appeal of the Decision addressed to the Secretary of the Air Force ("Secretary").
-



U.S. AIR FORCE

What can I find in the Ground Lease?

CONDITION 32 - EXHIBITS

- Nine (9) exhibits are attached to and made a part of this Lease, as follows:
 - Exhibit A - Description of Leased Premises
 - Exhibit B - Map of Leased Premises
 - Exhibit C - Physical Condition Report
 - Exhibit D - Environmental Baseline Survey
 - Exhibit E - Operating Agreement
 - Exhibit F - Lockbox Agreement
 - Exhibit G - Title X Lead-Based Paint Disclosure Statement
 - Exhibit H - Quitclaim Deeds
 - Exhibit I - Excluded Improvements
-



U.S. AIR FORCE

The Big “3”

The Big “3”

1. Ground Lease or Use Agreement
2. Lockbox Agreement
3. Developer’s Proposal (by reference)

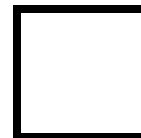
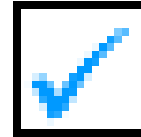
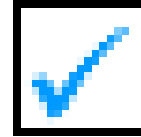
While there are hundreds of documents with provisions and conditions governing your transaction, its likely you will find many of the key compliance items in the Big Three.



U.S. AIR FORCE

Our Checklist for Today

- I understand that there are many legal documents governing my transaction
- I am familiar with some specific examples of “compliance items” in these documents
- I understand the compliance testing process
- I understand that my installation will customize this process to fit our needs
- I know what MY role is in this initiative and I’m ready for it!





U.S. AIR FORCE

The Process from Start...

Before you start compliance testing, you need a compliance checklist!

Activities Conducted Before Compliance Testing Begins

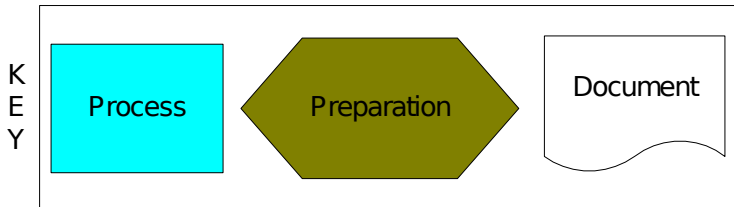


Between Transaction Closing and First Quarter of Compliance Testing

Prior to Compliance Testing, Jones Lang LaSalle develops the ICC based on final transaction documents.

Installation reviews ICC and makes changes to structure, process, and specific items that reflect installation staffing and subject matter expertise.

Upon completion, the ICC is a working compliance checklist ready to be used by all stakeholders to assess compliance.

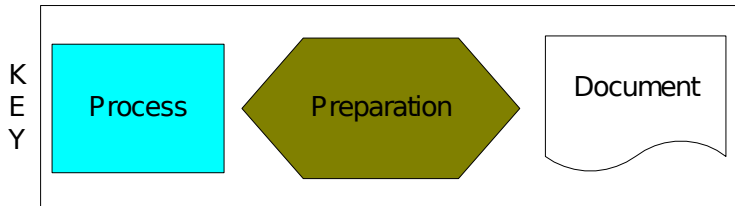
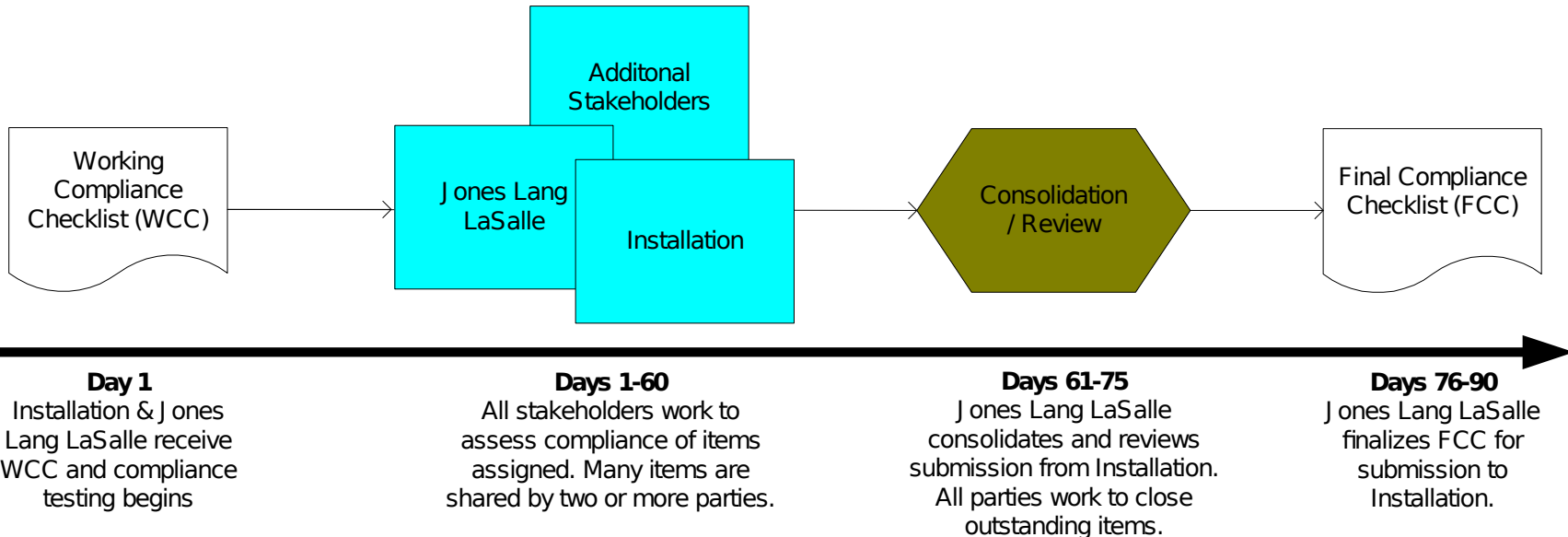




U.S. AIR FORCE

To Finish

Activities Conducted Each Quarter



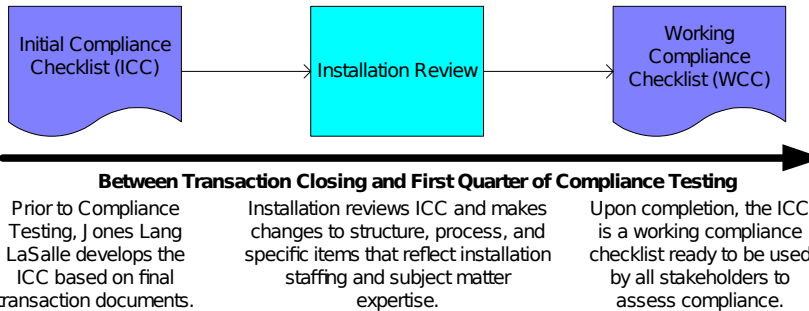
What do you do when quarterly compliance testing is complete?

Start it again for the next quarter!

Air Force Portfolio Management Program Process Map

Quarterly Compliance Testing

Activities Conducted Before Compliance Testing Begins



Microsoft Excel - Elmendorf Compliance Checklist (CONSOLIDATED 032403).xls

FileEditViewInsertFormatToolsDataWindowHelpAcrobatSend

Times New Roman10B

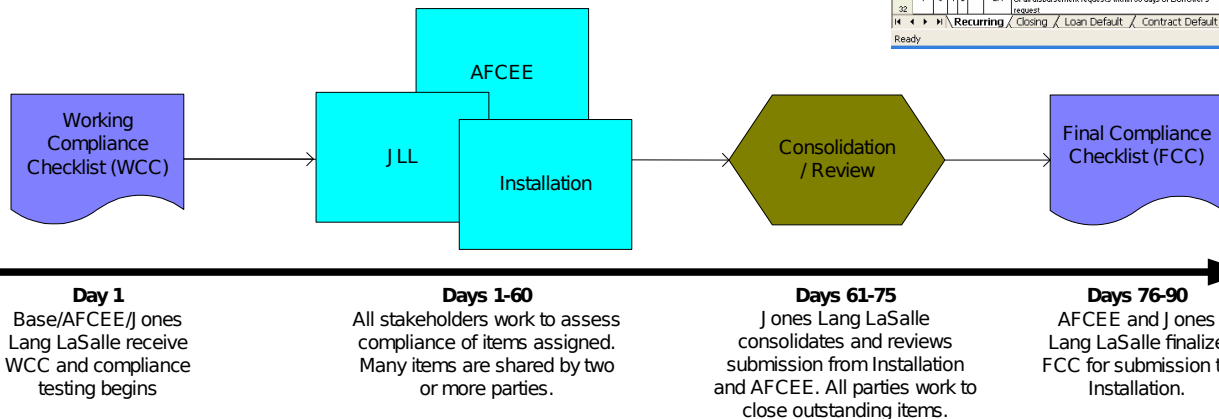
Type a question for help

F10

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	
	COMPLIANCE TASKS REQUIRED BY All Documents								TOC	CY 2003				RESPONSIBLE PARTY									
	Condition #	DOC	Task	Timing	1 QTR	2 QTR	3 QTR	4 QTR	Detail	AFCEE	PM	LEGAL	JLL	PM	LA	GA	FA	EA	BA	CA	DA	EA	
1	2	4	OA	Ensure that execution and amendment of the Operating Agreement is only undertaken by the Commander, 3rd Wing, Elmendorf AFB, or his/her representative.	As required	Yes				X				X									
2	2		SA	Obtain copies of all documents delivered to the Lender.	As Required	Yes				X											X		
3	2		SA	Ensure the Borrower delivers all requested documents to the Lender and incurs all associated costs.	As Required	Yes				X											X		
4	3	b	DL	Verify the receipt by the Government of monthly payments of interest until 1 Sep 2003.	Monthly	Yes			First of Month												X		
5	3	c	SA	Ensure the Borrower does not collect more than two months of advanced rent payments from non-target tenants.	On Going	Yes															X		
6	3	c	DL	Ensure that interest payments over 30 days late accrue as part of the remaining unpaid balance of the loan.	Monthly	Yes			30 days after the debt service due date	X											X		
7	3	c	DL	Ensure that if principle remains unpaid as of the Maturity Date (1 Sep 2043) it accrues and is payable at the Default Rate.	Monthly	Yes			After the Maturity Date	X											X		
8	3	c	DL	Verify the receipt by the Government of monthly payments of principle and interest totaling \$25,536.96 after 1 Sep 2003, the Commencement of Operations Date.	Monthly	Yes			First of Month	X											X		
9	4	0	1	a	LA	Maintain Lockbox Revenue Account.	On Going	Yes													X		
10	4	0	1	a	LA	Maintain Impositions Escrow Account.	On Going	Yes													X		
11	4	0	1	a	LA	Maintain Capital Repair and Replacement Account.	On Going	Yes													X		
12	4	0	1	a	LA	Maintain Security Deposit Account.	On Going	Yes													X		
13	4	0	1	a	LA	Maintain Performance Incentive Account.	On Going	Yes													X		
14	4	0	1	a	LA	Maintain Construction Escrow Account, including the Borrower Equity Subaccount, the Project Operations Subaccount and the Construction Loan Subaccount.	On Going	Yes													X		
15	4	0	1	a	LA	Maintain Quality of Life Enhancement Account.	On Going	Yes													X		
16	4	0	1	b	LA	Verify all disbursements from the Impositions Escrow Account and Tenant Security Deposit Account are made pursuant to a written requisition executed by an authorized officer of the Construction Lender.	On Going	Yes						X	X						X		
17	4	0	1	b	LA	Obtain copies of all disbursement requests and forward to Portfolio Manager.	On Going	Yes							X	X					X		
18	4	0	1	c	LA	Ensure that the Lender has no liens or security interest on the Lockbox Accounts.	On Going	Yes							X	X					X		
19	4	0	1	b	LA	Ensure the Lockbox Agent provided the Air Force with copies of all disbursement requests within 30 days of Borrower's request.	On Going	Yes							X	X					X		
20	4	0	1	b	LA		On Going	Yes															
21	4	0	1	b	LA		On Going	Yes															
22	4	0	1	b	LA		On Going	Yes															
23	4	0	1	b	LA		On Going	Yes															
24	4	0	1	b	LA		On Going	Yes															
25	4	0	1	b	LA		On Going	Yes															
26	4	0	1	b	LA		On Going	Yes															
27	4	0	1	b	LA		On Going	Yes															
28	4	0	1	b	LA		On Going	Yes															
29	4	0	1	b	LA		On Going	Yes															
30	4	0	1	b	LA		On Going	Yes															
31	4	0	1	b	LA		On Going	Yes															
32	4	0	1	b	LA		On Going	Yes															
33	4	0	1	b	LA		On Going	Yes															
34	4	0	1	b	LA		On Going	Yes															
35	4	0	1	b	LA		On Going	Yes															
36	4	0	1	b	LA		On Going	Yes															
37	4	0	1	b	LA		On Going	Yes															
38	4	0	1	b	LA		On Going	Yes															
39	4	0	1	b	LA		On Going	Yes															
40	4	0	1	b	LA		On Going	Yes															
41	4	0	1	b	LA		On Going	Yes															
42	4	0	1	b	LA		On Going	Yes															
43	4	0	1	b	LA		On Going	Yes															
44	4	0	1	b	LA		On Going	Yes															
45	4	0	1	b	LA		On Going	Yes															
46	4	0	1	b	LA		On Going	Yes															
47	4	0	1	b	LA		On Going	Yes															
48	4	0	1	b	LA		On Going	Yes															
49	4	0	1	b	LA		On Going	Yes															
50	4	0	1	b	LA		On Going	Yes															
51	4	0	1	b	LA		On Going	Yes															
52	4	0	1	b	LA		On Going	Yes															
53	4	0	1	b	LA		On Going	Yes															
54	4	0	1	b	LA		On Going	Yes															
55	4	0	1	b	LA		On Going	Yes															
56	4	0	1	b	LA		On Going	Yes															
57	4	0	1	b	LA		On Going	Yes															
58	4	0	1	b	LA		On Going	Yes															
59	4	0	1	b	LA		On Going	Yes															
60	4	0	1	b	LA		On Going	Yes															
61	4	0	1	b	LA		On Going	Yes															
62	4	0	1	b	LA		On Going	Yes															
63	4	0	1	b	LA		On Going	Yes															
64	4	0	1	b	LA		On Going	Yes															
65	4	0	1	b	LA		On Going	Yes															
66	4	0	1	b	LA		On Going	Yes															
67	4	0	1	b	LA		On Going	Yes															
68	4	0	1	b	LA		On Going	Yes															
69	4	0	1	b	LA		On Going	Yes															
70	4	0	1	b	LA		On Going	Yes															
71	4	0	1	b	LA		On Going	Yes															
72	4	0	1	b	LA		On Going	Yes															
73	4	0	1	b	LA		On Going	Yes															
74	4	0	1	b	LA		On Going	Yes															
75	4	0	1	b	LA		On Going	Yes															
76	4	0	1	b	LA		On Going	Yes															
77	4	0	1	b	LA		On Going	Yes															
78	4	0	1	b	LA		On Going	Yes															
79	4	0	1	b	LA		On Going	Yes															
80	4	0	1	b	LA		On Going	Yes															
81	4	0	1	b	LA		On Going	Yes															
82	4	0	1	b	LA		On Going	Yes															
83	4	0	1	b	LA		On Going	Yes															
84	4	0	1	b	LA		On Going	Yes															
85	4	0	1	b	LA		On Going	Yes															
86	4	0	1	b	LA		On Going	Yes															
87	4	0	1	b	LA		On Going	Yes															
88	4	0	1	b	LA		On Going	Yes															
89	4	0	1	b	LA		On Going	Yes															
90	4	0	1	b	LA		On Going	Yes															
91	4	0	1	b	LA		On Going	Yes															
92	4	0	1	b	LA		On Going	Yes															
93	4	0	1	b	LA		On Going	Yes															
94	4	0	1	b	LA		On Going	Yes															
95	4	0	1	b	LA		On Going	Yes															
96	4	0	1	b	LA		On Going	Yes															
97	4	0	1	b	LA		On Going	Yes															
98	4	0	1	b	LA		On Going	Yes															
99	4	0	1	b	LA		On Going	Yes															
100	4	0	1	b	LA		On Going	Yes															
101	4	0	1	b	LA		On Going	Yes															
102	4	0	1	b	LA		On Going	Yes															
103	4	0	1	b	LA		On Going	Yes															

Sample Working Compliance Checklist (WCC)

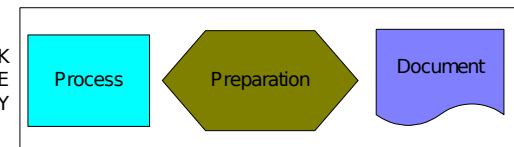
Activities Conducted Each Quarter



Repeat cycle every 90 days

Jones Lang LaSalle has developed a specialized compliance testing process in conjunction with its Air Force Portfolio Management responsibilities. Compliance Testing is conducted at each base on a quarterly basis to verify that all project stakeholders are meeting or exceeding obligations made in the original transaction documents. When fully implemented, compliance testing is a powerful tool that the Air Force can use to highlight potential problems and protect its interests.

K
E
Y





U.S. AIR FORCE

Sample Compliance Checklist

Mini Case Study #1 - Dyess AFB



- Checklist organized by responsibility (i.e. AFCEE tasks, Dyess AFB tasks, Jones Lang LaSalle tasks)
- Within Dyess AFB, tasks are further divided into engineering, housing, environmental etc.
- This installation has a VERY small staff, so this “division of labor” technique is very

Let's take a look at a recent Dyess AFB checklist...
effective



U.S. AIR FORCE

Sample Compliance Checklist

Mini Case Study #2 - Wright Patterson AFB

Housing at Wright Patterson Air Force Base

- Checklist organized by legal document (i.e. Ground Lease, Operating Agreement)
- The tasks for in agreement can be sorted to see who is responsible
- This installation also has a VERY small staff, but prefers this methodology

Let's take a look at a recent Wright Patterson AFB checklist...



U.S. AIR FORCE

Sample Compliance Checklist

Mini Case Study #3 - Elmendorf AFB



3rd Mission Spt Gp

- Checklist organized by task frequency (i.e. recurring tasks, closing tasks, default tasks)
- Tasks are added, removed, or redistributed as necessary
- This installation has a large staff, so they are able to allocate more detailed oversight of each task

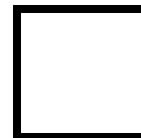
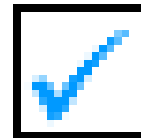
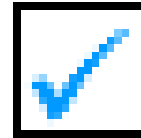
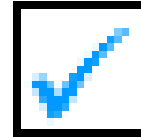
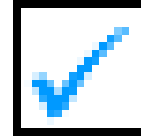
Let's take a look at a recent Elmendorf AFB checklist...



U.S. AIR FORCE

Our Checklist for Today

- I understand that there are many legal documents governing my transaction
- I am familiar with some specific examples of “compliance items” in these documents
- I understand the compliance testing process
- I understand that my installation will customize this process to fit our needs
- I know what MY role is in this initiative and I’m ready for it!





Roles and Responsibilities

Installation:

- Assess compliance with each item every quarter
- Provide completed checklist to AFCEE every quarter
- Provide accompanying discussion on non-compliant items or items that can not be assessed

MAJCOM:

- Assess compliance with any items specific to MAJCOM

AFCEE:

- Assess compliance with any items specific to AFCEE
 - Review installation and MAJCOM submissions
 - Provide final quarterly compliance report
-



Compliance Testing/Key Issues

Customization

- Unique elements to each transaction and operations at each installation

Defining Roles and Responsibilities

- Items that need to be assessed can be related to project financials, environmental issues, engineering issues, housing issues, or other

Staffing/Organizational Structure

- Who will oversee compliance testing at the installation?
How will this process be managed?

Communications

- AFCEE and Jones Lang LaSalle act as support network for the installation
-



U.S. AIR FORCE

Compliance Testing Defined

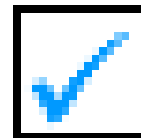
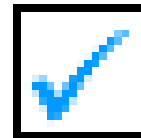
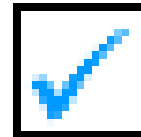
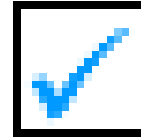
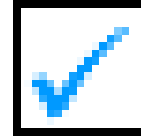
Compliance Testing is the quarterly assessment of stakeholder compliance with the obligations and responsibilities mandated in transaction legal documents in order to protect Air Force interests and assess whether the Air Force is “getting what we paid for”



U.S. AIR FORCE

Our Checklist for Today

- I understand that are many legal documents govern my transaction
- I am familiar with some specific examples of “compliance items” in these documents
- I understand the compliance testing process
- I understand that my installation will customize this process to fit our needs
- I know what MY role is in this initiative and I’m ready for it!





U.S. AIR FORCE

Q&A

- In case you have a “Q” later....

Seth Weinert

Jones Lang LaSalle

1627 Eye Street NW, 8th Floor

Washington, DC 20005

seth.weinert@am.joneslanglasalle.com

202-222-1668
